IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Crl.Rev.Pet.No. 4149 of 2007()

CRA.312/2002 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY
STC.1568/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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REVN. PETITIONER: APPELLANT/ACCUSED

KUNJIPURAYIL JAYACHANDRAN,
S/O.KUNJIRAMAN, AGED 47 YEARS,
ELAYAVOOR AMSOM, KANNOTHUCHAL.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING STATION HOUSE OFFICER,
KANNUR TOWN POLICE STATION, KANNUR.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 4149 of 2007

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Dated: 21-11-2007

ORDER

Petitioner who was the accused in S.T. Case No. 1568 of 1998 on the file of the J.F.C.M., Kannur for offences punishable under Sections 323 and 353 I.P.C. and Sec. 51 (A) of the Kerala Police Act, challenges the conviction recorded concurrently by the courts below for an offence punishable under Sec. 323 I.P.C. and Sec. 51 (A) of the Kerala Police Act. For the conviction under Section 323 I.P.C. he was sentenced to undergo simple imprisonment for three months . For the conviction under Section 51 (A) of the Kerala Police Act he was sentenced to pay a fine of Rs. 50/- and in default to pay the fine to suffer simple imprisonment for 5 days.

2. The case of the prosecution as proved by P.Ws 1 to 10 and the documentary evidence is as follows:-

On 18-8-1998 at about 7 .45 p.m. the accused was found near the Police Aid Post inside the Kannur Municipal bus stand and was seen behaving in a disorderly manner after consuming alcohol. When P.W.1. the police constable who was on traffic duty inside the said bus stand attempted to remove the accused from the place,

the accused voluntarily caused hurt to P.W.1 by beating him with his hand on his face.

3. Eventhough the learned counsel appearing for the revision petitioner assailed the conviction on various grounds, this Court sitting in revision will be loathe to interfere with the said conviction which has been recorded by the courts below after a careful evaluation of the oral and documentary evidence in the case. The conviction is accordingly, confirmed.

4. What now survives for consideration is the question as to the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that the accused was found behaving in a disorderly manner in a public place attracting Sec. 51 A of the Kerala Police Act. It is also proved that while he was attempted be removed from the scene by the police constable on traffic duty, the accused assaulted him. But no sort of previous enmity or ill-will is attributed to the accused so as to mount an attack against the police constable on duty. His act is ascribable to his conduct of consuming alcohol and nothing more. Probably the assault was an act of resistance against the forcible removal from the spot by the police constable. At any rate, for the said offence of Sec. 323 I.P.C. the revision petitioner does not deserve penal servitude by way of incarceration. I am of the

view that interests of justice will be adequately met by imposing an appropriate fine. Accordingly, the sentence imposed on the revision petitioner for the offence under Sec. 323 I.P.C. is set aside and instead, he is sentenced to a fine of Rs.750/- and on default to pay the fine, he shall suffer simple imprisonment for 10 days.

This revision is disposed of confirming the conviction entered and modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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